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prosecution for the unlawful sale of ardent spirits, in which it was claimed that defendant sold flavoring extracts for beverage purposes, evidence held sufficient for submission of the case to the jury.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 151.]

Error to Circuit Court, Alleghany County.

T. H. Bragg was convicted of violating the prohibition law, and he brings error. Affirmed.

*Geo. A. Revercomb* and *R. C. Stokes*, both of Covington, for plaintiff in error.

*John R. Saunders*, *Atty. Gen.*, for the Commonwealth.

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WAY v. BAYDUSH.

June 15, 1922.

[112 S. E. 611.]

**1. Frauds, Statute of (§ 159\*)—Where There Is Doubt Whether an Oral Promise Is to Answer for the Debt of Another, the Matter Is for the Jury; Otherwise for the Court.**—Where there is any doubt whether the oral promise relied on was an original promise, or one to answer for the debt or default of another within the statute, it is for the jury to determine in view of the surrounding facts and circumstances, but if there is no such doubt, the matter is for the court.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 519.]

**2. Frauds, Statute of (§ 17\*)—Whether Oral Promise to Pay Is Independent of a Promise to Answer for Another Does Not Depend Solely on the Form of Expression.**—Whether an oral promise to pay is an independent promise, or a promise to answer for the debt or default of another, does not depend altogether on the form of expression, but largely upon the parties' situation and whether they understood it to be a collateral or direct promise.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 519.]

**3. Trial (§ 194 (9)\*)—Instructing that Oral Promise Was to Pay Another's Debt Was Error Where Conflicting Evidence Made a Jury Question.**—Where owner, urging subcontractor to perform, said, "If it is money trouble you are hanging back on, you go ahead and finish that work, and look to me for the pay," held, that the conflicting evidence presented questions whether this was an independent oral promise or a collateral promise within the statute of frauds to answer for the contractor's debt, and it was error to instruct that the promise was one to pay another's debt.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 519.]

**4. Frauds, Statute of (§ 160\*)—Instruction as to Promise to An-**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**swer for Debt of a Contractor to Subcontractor Held Properly Refused.**—In a subcontractor's action against owner, where the evidence presented a question as to whether owner's oral promise to subcontractor was an independent one, or a promise to answer for the default of the contractor, instruction that, if the jury believed that the owner promised to see that plaintiff was paid for the work in question, and that the object of the promise was to subserve some pecuniary or business purpose of said owner, involving either a benefit to himself or damage to the subcontractors, his promise was not within the statute, they should find for the plaintiff, was properly refused.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 519.]

Error to Circuit Court of City of Norfolk.

Action by S. H. Way against B. Baydush to foreclose a mechanic's lien. Verdict for the defendant, and the plaintiff brings error. Reversed, and remanded for new trial.

*Thos. W. Shelton and Alfred Anderson*, both of Norfolk, for plaintiff in error.

*Willcox, Cooke & Willcox*, of Norfolk, for defendant in error.

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CREASY *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 615-6.]

**1. Intoxicating Liquors (§ 236 (20)\*)—Evidence Held Sufficient to Warrant Conviction for Transporting.**—In a prosecution for unlawfully transporting whisky, evidence held sufficient to warrant conviction.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

**2. Criminal Law (§ 1159 (4)\*)—Verdict Settles Question of Credibility of Witnesses.**—Where a liquor prosecution turned upon the question of credibility of witnesses, the verdict of conviction settled such question, and the reviewing court must accept as true the evidence believed by the jury.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

Error to Circuit Court, Bedford County.

Buford Creasy was convicted of unlawfully transporting whisky, and brings error. Affirmed.

*Nelson Sale*, of Bedford City, for plaintiff in error.

*John R. Saunders, Atty. Gen.*, and *J. D. Hank, Jr., Asst. Atty. Gen.*, for the Commonwealth.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.